

1 **SANDERS LAW GROUP**  
2 Douglas H. Sanders, Esq.  
3 100 Garden City Plaza, Suite 500  
Garden City, NY 11530  
Tel: (516) 203-7600  
File No.: 124651

4  
5 *Attorneys for Plaintiff*  
6

7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF MASSACHUSETTS**  
**SPRINGFIELD DIVISION**

9 Dennis Clark,

10 Plaintiff,

Case No:

11 v.  
12 The Berkshire Edge LLC,

13 Defendant.

14  
15 **COMPLAINT**

DEMAND FOR JURY TRIAL

16 Plaintiff Dennis Clark (“*Plaintiff*”), by and through its undersigned counsel, for its  
17 Complaint against defendant The Berkshire Edge LLC (“*Defendant*”) states and alleges as  
18 follows:

19 **INTRODUCTION**

20 1. This action seeks to recover damages for copyright infringement  
21 2. Plaintiff herein creates photographic images and owns the rights to these  
22 photographs which Plaintiff licenses for various uses including online and print publications.

23 3. Defendant owns and operates a website known as theberkshireedge.com (the  
24 “*Website*”).

25 4. Defendant, without permission or authorization from Plaintiff actively copied,  
26 stored, and/or displayed Plaintiff’s Photograph on the Website and engaged in this misconduct  
27 knowingly and in violation of the United States copyright laws.

## PARTIES

5. Plaintiff Dennis Clark is an individual who is a citizen of the State of New York and maintains a principal place of business at 1993 Beech Street, Wantagh in Nassau County, New York.

6. Upon information and belief, Defendant The Berkshire Edge LLC, is a Massachusetts limited liability company with a principal place of business at 100 Alford Road, Great Barrington in Berkshire County, Massachusetts and is liable and responsible to Plaintiff based on the facts herein alleged.

## **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over The Berkshire Edge LLC because it maintains its principal place of business in Massachusetts.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because The Berkshire Edge LLC does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

## **FACTS COMMON TO ALL CLAIMS**

10. Plaintiff is a professional photographer by trade who is the legal and rightful owners of photographs which it licenses to online and print publications.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the “USCO”) which cover many of Plaintiff’s photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff owns protectable copyright interests.

14. Upon information and belief, The Berkshire Edge LLC is the registered owner

1 of the Website and is responsible for its content.  
2

3 15. Upon information and belief, The Berkshire Edge LLC is the operator of the  
4 Website and is responsible for its content.  
5

6 16. The Website is a popular and lucrative commercial enterprise.  
7

8 17. The Website is monetized in that it contains paid advertisements and, on  
9 information and belief, Defendant profits from these activities.  
10

11 18. On August 14, 2019, Plaintiff authored a photograph of former New York state  
12 Andrew Cuomo speaking in front of several law enforcement officials (the “*Photograph*”). A  
13 copy of the Photograph is attached hereto collectively as Exhibit 1.  
14

15 19. Plaintiff applied to the USCO to register the Photograph on or about September  
16 30, 2019 under Application No. 1-8117302091.  
17

18 20. The Photograph was registered by the USCO on September 30, 2019 under  
19 Registration No. VA 2-172-150.  
20

21 21. On September 27, 2019, Plaintiff first observed the Photograph on the Website  
22 in a story dated August 20, 2019. A copy of screengrab of the Website including the Photograph  
23 is attached hereto collectively as Exhibit 2.  
24

25 22. The Photograph was displayed at URL: [https://theberkshireedge.com/alan-](https://theberkshireedge.com/alan-chartock-31/)  
26 [chartock-31/](https://theberkshireedge.com/alan-chartock-31/andrew-cuomo-dennis-clark-2/) and at URL: <https://theberkshireedge.com/alan-chartock-31/andrew-cuomo-dennis-clark-2/> (*Exhibit 2-Infringement #1-2*).  
27

28 23. The Photograph was stored at URL: [https://theberkshireedge.com/alan-](https://theberkshireedge.com/alan-chartock-31/andrew-cuomo-dennis-clark-2/)  
29 [chartock-31/andrew-cuomo-dennis-clark-2/](https://theberkshireedge.com/alan-chartock-31/andrew-cuomo-dennis-clark-2/).  
30

31 24. Without permission or authorization from Plaintiff, Defendant volitionally  
32 selected, copied, stored and displayed Plaintiff’s copyright protected Photograph as is set forth  
33 in Exhibit “1” on the Website.  
34

35 25. Upon information and belief, the Photograph was copied, stored and displayed  
36 without license or permission, thereby infringing on Plaintiff’s copyrights (hereinafter  
37 singularly the “*Infringement*” and collectively the “*Infringements*”).  
38

1       26. Each Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed  
2 tangible medium of expression that was sufficiently permanent or stable to permit it to be  
3 communicated for a period of more than transitory duration and therefore constitutes a specific  
4 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160  
5 (9th Cir. 2007).

6       27. Each Infringement is an exact copy of the entirety of Plaintiff's original image  
7 that was directly copied and stored by Defendant on the Website.

8       28. Upon information and belief, Defendant takes an active and pervasive role in the  
9 content posted on its Website, including, but not limited to copying, posting, selecting,  
10 commenting on and/or displaying images including but not limited to Plaintiff's Photographs.

11       29. Upon information and belief, Defendant directly contributes to the content  
12 posted on the Website by, *inter alia*, directly employing reporters, authors and editors as its  
13 agents, including but not limited to David Scribner whereby Defendant's Website list him as  
14 “Editor-in-Chief” and Alan Chartock whereby Defendant's Website list him as an “Author”  
15 (“*Employees*”).

16       30. Upon information and belief, at all material times the Employees were acting  
17 within the course and scope of their employment when they posted the Infringements.

18       31. Upon information and belief, at all material times the Employees were acting  
19 within the course and scope of their agency when they posted the Infringements.

20       32. Upon information and belief, the Photographs were willfully and volitionally  
21 posted to the Website by Defendant.

22       33. Upon information and belief, Defendant is not registered with the United States  
23 Copyright Office pursuant to *17 U.S.C. §512*.

24       34. Upon information and belief, the Infringement were not posted at the direction  
25 of a “user” as that term is defined in *17 U.S.C. §512(c)*.

26       35. Upon information and belief, Defendant engaged in the Infringements  
27 knowingly and in violation of applicable United States Copyright Laws.

36. Upon information and belief, Defendant had complete control over and actively reviewed and monitored the content posted on the Website.

37. Upon information and belief, Defendant has the legal right and ability to control and limit the infringing activities on its Website and exercised and/or had the right and ability to exercise such right.

38. Upon information and belief, Defendant monitors the content on its Website.

39. Upon information and belief, Defendant has received a financial benefit directly attributable to the Infringements.

40. Upon information and belief, the Infringements increased traffic to the Website and, in turn, caused Defendant to realize an increase in its advertising revenues.

41. Upon information and belief, a large number of people have viewed the unlawful copies of the Photograph on the Website.

42. On information and belief, Defendant at all times had the ability to stop the reproduction and display of Plaintiff's copyrighted material.

43. Defendant's use of the Photograph, if widespread, would harm Plaintiff's potential market for the Photograph.

44. On April 18, 2022, Plaintiff forwarded Defendant via USPS Certified Mail a demand letter including a draft copy of this complaint.

45. Plaintiff he confirmed delivery of the demand letter and draft complaint with the United States Post Office.

46. Despite receiving notice of the Infringements, Defendant did not contact Plaintiff's counsel and has continued to store and display Plaintiff's Photograph on the Website thereby establishing the willfulness of the Infringements.

47. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

## FIRST COUNT

***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

48. Plaintiff repeats and incorporates by reference the allegations contained in the

1 preceding paragraphs, as though set forth in full herein.  
2

3 49. The Photograph is an original, creative work in which Plaintiff owns valid  
4 copyright properly registered with the United States Copyright Office.  
5

6 50. Plaintiff has not licensed Defendant the right to use the Photograph in any  
7 manner, nor has Plaintiff assigned any of its exclusive rights in the Copyrights to Defendant.  
8

9 51. Without permission or authorization from Plaintiff and in willful violation of  
10 Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored,  
11 reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff  
12 thereby violating one of Plaintiff's exclusive rights in its copyrights.  
13

14 52. Defendant's reproduction of the Photograph and display of the Photograph on  
15 the Website constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural*  
16 *Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).  
17

18 53. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is  
19 entitled to an award of actual damages and disgorgement of all of Defendant's profits  
20 attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or,  
21 in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for  
22 each infringement pursuant to 17 U.S.C. § 504(c).  
23

24 54. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court  
25 in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and  
26 costs pursuant to 17 U.S.C. § 505 from Defendant.  
27

28 55. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is  
29 entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17  
30 U.S.C. § 502.  
31

#### JURY DEMAND

32 56. Plaintiff hereby demands a trial of this action by jury.  
33

#### PRAYER FOR RELIEF

34 35 **WHEREFORE** Plaintiff respectfully requests judgment as follows:  
36

That the Court enters a judgment finding that Defendant has infringed on Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary relief as follows:

- a. finding that Defendant infringed upon Plaintiff's copyright interest in the Photograph by copying and displaying without a license or consent;
- b. for an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for each infringement pursuant to 17 U.S.C. § 504(c), whichever is larger;
- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendants from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: June 8, 2022

SANDERS LAW GROUP

By: /s/ Douglas H. Sanders  
Douglas H. Sanders, Esq.  
100 Garden City Plaza, Suite 500  
Garden City, NY 11530  
Tel: (516) 203-7600  
Email: [csanders@sanderslaw.group](mailto:csanders@sanderslaw.group)  
File No.: 124651  
*Attorneys for Plaintiff*